

## § 720.21

## 32 CFR Ch. VI (7–1–11 Edition)

that no physical offer of service had been made. The commanding officer will advise the Judge Advocate General or the Associate General Counsel (Litigation), as appropriate, of all requests for service of process from a foreign court and the details thereof.

(d) *Leave or liberty to be granted persons served with process.* When members or civilian employees are either served with process, or voluntarily accept service of process, in cases where the United States is not a party to the litigation, the commanding officer normally will grant leave or liberty to the person served to permit compliance with the process, unless to do so would have an adverse impact on naval operations. When a member or civilian employee is a witness for a nongovernmental party because of performance of official duties, the commanding officer may issue the person concerned permissive orders authorizing attendance at the trail at no expense to the Government. The provisions of 32 CFR part 725 must also be considered in such cases. Members or civilian employees may accept allowances and mileage tendered; however, any fees tendered for testimony must be paid to the Department of the Navy unless the member or employee is on authorized leave while attending the judicial proceeding. When it would be in the best interests of the United States Government (for example, in State criminal trials), travel funds may be used to provide members and civilian employees as witnesses as provided in the Joint Federal Travel Regulations. Responsibility for the payment of the member's mileage and allowances will be determined pursuant to the Joint Federal Travel Regulations, Volume 1, paragraph M6300, subsections 1–3.<sup>3</sup>

(e) *Report where service not allowed.* Where service of process is not permitted, or where the member or civilian employee is not given leave, liberty, or orders to attend a judicial proceeding, a report of such refusal and the reasons therefor shall be made by telephone, or message if telephone is impractical, to the Judge Advocate General or the Associate General Counsel (Litigation), as appropriate.

<sup>3</sup> See footnote 1 of § 720.5(b).

### **§ 720.21 Members or civilian employees subpoenaed as witnesses in State courts.**

Where members or civilian employees are subpoenaed to appear as witnesses in State courts, and are served as described in §§ 720.20, 720.20(d) applies. If these persons are requested to appear as witnesses in State courts when the interests of the Federal Government are involved (e.g., Medical Care Recovery Act cases), follow the procedures described in § 720.22. If State authorities are attempting to obtain the presence of a member or a civilian employee as a witness in a civil or criminal case, and such person is unavailable because of an overseas assignment, the command should immediately contact the Judge Advocate General, or the Associate General Counsel (Litigation), as appropriate.

### **§ 720.22 Members or civilian employees subpoenaed as witnesses in Federal courts.**

(a) *Witnesses on behalf of Federal Government.* When members or civilian employees of the Department of the Navy are required to appear as witnesses in a Federal Court to testify on behalf of the Federal Government in cases involving Department of the Navy activities, the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, will issue temporary additional duty orders to that person. The charges for such orders will be borne by the activity to which the required witness is attached. Payment to witnesses will be as provided by the Joint Federal Travel Regulations and U.S. Navy travel instructions. If the required witness is to appear in a case in which the activities of the Department of the Navy are not involved, the Department of the Navy will be reimbursed in accordance with the procedures outlined in the Navy Comptroller Manual, section 046268.

(b) *Witnesses on behalf of nongovernmental parties—(1) Criminal actions.* When members or civilian employees are served with a subpoena to appear as a witness for a defendant in a criminal action and the fees and mileage required by rule 17(d) of the Federal Rules of Criminal Procedure are tendered, the commanding officer may